



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/132,017	01/03/2012	Yanchao Fu	2043.589US2	1302

49845 7590 07/26/2017
SCHWEGMAN LUNDBERG & WOESSNER/EBAY
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER

CIVAN, ETHAN D

ART UNIT	PAPER NUMBER
----------	--------------

3684

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

07/26/2017

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM
SLW@blackhillsip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YANCHAO FU

Appeal 2015-007619
Application 13/132,017¹
Technology Center 3600

Before BIBHU R. MOHANTY, MICHAEL C. ASTORINO, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1–20 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

¹ The Appeal Brief (page 2) identifies eBay Inc. as the real party in interest.

THE INVENTION

The Appellant's claimed invention is directed to electronic commerce activities over a network (Spec. 1, ll. 9, 10). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A computerized method comprising:
accessing information retrieved from a search query conducted by a potential buyer for a product;
extracting buyer information of the potential buyer from the accessed information, the buyer information including contact and interest information of the potential buyer;
transmitting the buyer information of the potential buyer to a third party;
receiving a compensation for the product from the potential buyer, the compensation identifying the third party as a promoter of the product; and
transferring, using one or more processors, a commission to the third party in response to the received compensation for the product from the potential buyer, wherein the commission to the third party is determined based on a reputation of the third party that is evaluated by a total value of one or more past successful promotions achieved by the third party.

THE REJECTIONS

The following rejections are before us for review:

1. Claims 1–20 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
2. Claims 1–20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Donaldson (US 2005/0203766 A1, pub. Sept. 15, 2005) and Shastry (US 2008/0147540 A1, pub. June 19, 2008).

FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence.²

ANALYSIS

Rejection under 35 U.S.C. § 101

The Appellant argues that the rejection of claim 1 under 35 U.S.C. § 101 is improper because the claim recites more than a generic computer structure performing generic computer functions, is more than a mere abstract idea, solves a technological problem in conventional industry practice, and that the claim passes the machine or transformation test (App. Br. 7–10, Reply Br. 2, 3).

In contrast, the Examiner has determined that the rejection is proper (Ans. 2, 3, 8, 9).

We agree with the Examiner. Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In judging whether claim 1 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo*

² *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

Collaborative Servs. v. Prometheus Labs., Inc., 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. If so, we then consider the elements of the claim both individually and as “an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application of the abstract idea. *Id.* This is a search for an “inventive concept” an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.* The Court also stated that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Id.* at 2358.

Here, we find that the claim is directed to the concept of providing commissions between parties in a sales transaction. This is a fundamental economic practice long prevalent in our system of commerce, and is an abstract idea beyond the scope of § 101. We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function.

Here, the claim is not rooted in technology, but rather in the abstract concept of providing commissions between parties in a sales transaction. For these reasons this rejection of claim 1 is sustained.

Rejection under 35 U.S.C. § 103(a)

The Appellant argues that the rejection of claim 1 is improper because the cited prior art fails to disclose the claim limitation wherein:

the commission to the third party is determined based on a reputation of the third party that is evaluated by a total value of one or more past successful promotions achieved by the third party

(App. Br., Claims App'x).

In contrast, the Examiner has determined that the cited claim limitation is suggested by the combination of Donaldson (¶¶ 17, 18, 24–26) and Shastry (¶¶ 18, 19) (Ans. 4, 5, 10).

We agree with the Appellant. Here the argued claim limitation requires in part that the commission to the third party “is evaluated by a total value of one or more past successful promotions achieved by the third party.” While Shastry at paragraphs 18 and 19 does disclose the use of a third party 105 in the transaction, there is no specific disclosure that the third party specifically performed past promotions. For these reasons the rejection of claim 1 and its dependent claims is not sustained. The remaining independent claims 9 and 15 contain a similar limitation and the rejection of these claims is not sustained as well.

CONCLUSIONS OF LAW

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 101.

We conclude that Appellant has shown that the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 103(a).

DECISION

The Examiner’s rejection of claims 1–20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED